

#352/8

AGREEMENT

#09611 KANSAS PAYMENT CENTER

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AGREEMENT FOR FIRST RENEWAL PERIOD

This agreement is made this 24~~th~~ day of August, 2011, by and between YoungWilliams, P.C., hereinafter referred to as Contractor or YoungWilliams, and the Secretary of the Department of Social and Rehabilitation Services of the State of Kansas, hereinafter referred to as "SRS," pursuant to contract 09611;

WHEREAS, SRS and JPMorgan Chase, hereinafter referred to as JPM, originally entered into an agreement whereby JPM became the prime contractor for Contract 09611. Thereafter, JPM entered into an Asset Transfer Agreement with YoungWilliams, causing YoungWilliams to become the prime contractor under contract 09611 as of September 30, 2010. SRS recognized and accepted the Asset Transfer Agreement between JPM and YoungWilliams on September 29, 2010. SRS and YoungWilliams acknowledge that all the terms, requirements, responsibilities and liabilities of contract 09611 were transferred to YoungWilliams and continue in effect.

WHEREAS, SRS wishes to continue receiving services for the operation of the Kansas Payment Center pursuant to Contract 09611; and

WHEREAS, YoungWilliams is a recognized vendor of these services and desires to provide them to SRS; and

WHEREAS, Contract 09611 provides for first and second renewal periods of three years each and sets forth compensation to be paid each year;

NOW THEREFORE, in consideration of the mutual agreements contained below, SRS and YoungWilliams contract as follows:

CONTRACT DOCUMENTS

The contract between SRS and Contractor consists of the following in order of controlling language:

- 1) Form DA-146a, revised April 2011, copy attached hereto;
- 2) This agreement signed by the parties;
- 3) Amendment #1 to Contract 09611, dated March 27, 2007;
- 4) The Request For Proposal for Contract 09611, including any addenda and amendments thereto;
- 5) JPM's best and final offer;
- 6) Amendments and clarifications to JPM's proposal submitted in response to the Request For Proposal.
- 7) JPM's proposal submitted in response to the Request For Proposal as finalized.

Each of the above documents is incorporated by reference herein.

TERMS

1) The term of operation of this contract extension began on July 1, 2011, and continues through June 30, 2014. If deemed to be in the best interest of the State the contract term ending

June 30, 2014, may be extended for one last three-year additional option period, as set forth in the Contract #09611. (July 1, 2014 through June 30, 2017).

2) The Contractor agrees that any objection, clause or statement contained in items 7, 8, 9 in the list of Contract Documents which is contrary to or modifies the terms of the RFP is withdrawn and that the terms as set forth in the RFP are controlling.

3) With respect to the KPC debit card, Contactor and SRS agree that SRS accepts the original fee schedule for debit card holders as set out on pages 19 and 20 of the best and final offer (item 7 in the list of Contract Documents above) which allows one free withdrawal per deposit, and **not** the fee schedule associated with two free withdrawals.

PAYMENT

Payment shall be in accordance with terms as set out in the RFP as a flat rate per year (to be paid on a monthly basis) as follows:

Base contract:

Year 1:	\$ 4,995,029	completed
Year 2:	4,794,659	completed
Year 3:	4,699,393	completed
Year 4:	4,605,994	(year to be pro-rated between JPM and Young Williams as of September 30, 2010) completed

Option Period #1:

Year 5:	4,970,722
Year 6:	5,241,074
Year 7:	4,957,178

Option Period #2:

Year 8:	4,882,463
Year 9:	4,758,777
Year 10:	4,669,786

Total 10 year contract: \$48,575,075

CAPTIONS

The descriptive headings of this agreement are for convenience only and shall not be deemed to affect the meaning of any provision.

MODIFICATIONS


This agreement may only be modified by the mutual written agreement of the parties with the approval of the Committee.

Approved:

By:


Robert Siedlecki,Title: Secretary of the Kansas Department of
Social and Rehabilitation Services

By:


Rob WellsTitle: President,
Young Williams, P.C.

By:


Chris HoweTitle: Director of Purchasing, Kansas
Department of Administration

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CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 04-11), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."